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OFFICE OF PETITIONS

In re Patent No. 7,344,860 :
Franco et al. : DECISION ON REQUEST FOR
Issue Date: March 18, 2008 : RECONSIDERATION OF
Application No. 10/817,607 : PATENT TERM ADJUSTMENT
Filed: April 2, 2004 :
Attorney Docket No. D0272 NP :

This is in response to the "SUPPLEMENTAL PETITION TO CORRECT PATENT TERM ADJUSTMENT PERIOD IN GRANTED PATENT 7,344,860 under 1.705(D)," filed November 3, 2008, requesting reconsideration of the determination of patent term adjustment under 35 U.S.C. 154(b). Patentee requests that the patent term adjustment be increased from 491 to 840 days.

The request for reconsideration of patent term adjustment under § 1.705(d) is DISMISSED AS UNTIMELY FILED.

Patentee is given **TWO (2) MONTHS** to respond to this decision. No extensions of time will be granted under § 1.136(a).

On November 3, 2008, the subject application under 37 CFR 1.705(d) was filed. Patentee argues that it is entitled to additional patent term adjustment for the period of delay in issuance of the patent in excess of three years (over three year delay) in view of the recent decision in Wyeth v. Dudas, No. 07-1492 (D.D.C. Sept. 30, 2008).

The application is untimely. As stated in MPEP 2730, 1.705(d) provides that:

If there is a revision to the patent term adjustment indicated in the notice of allowance, the patent will indicate the revised patent term adjustment. *If the patent indicates or should have indicated a revised patent term adjustment, any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued and must comply with the requirements of paragraphs (b)(1) and (b)(2) of this section.* Any request for reconsideration under this section that raises issues that were raised, or could have been raised, in an application for patent term adjustment under paragraph (b) of this section shall be dismissed as untimely as to those issues.

(emphasis added)

As the patent issued March 18, 2008, any application for patent term adjustment under 37 CFR 1.705(d) was required to have been filed on or before May 18, 2008, which is two (2) months from the date the patent issued. The instant request is not timely as it was not, as stated by patentee, filed within two months of the issue date of the subject patent.

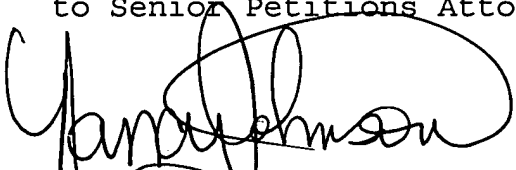
Patentees filing of this as a supplemental petition to correct patent term adjustment (PTA) does not change this conclusion. Patentees filed an initial application for patent term adjustment on March 13, 2008. This was within 2 months of the date of the issuance of the patent. However, the application for patent term adjustment filed on March 13, 2008, was only directed to issues that could have been raised before the payment of the issue fee on application for patent term adjustment under 37 CFR 1.705(b). Additionally, the issue fee was paid on September 20, 2007. Accordingly, by decision mailed October 28, 2008, the application for patent term adjustment filed March 13, 2008 was properly dismissed as untimely filed (after payment of the issue fee).

Moreover, the request to correct patent term adjustment filed on March 13, 2008 agreed with the period of adjustment entered for Office delay (including the over three year period). As such, patentees acquiesced to the Office's calculation of the period of adjustment for over three year delay. The subject application filed November 3, 2008 first raised the issue of calculation of the over three year delay. However, the subject application was filed more than seven (7) months after the date of issuance of

the patent. As the instant request for reconsideration of patent term adjustment pursuant to 37 CFR 1.705(d) first requests reconsideration of the over three year delay and was not filed within two (2) months of the date of issuance of the patent, such request is clearly untimely.

Submission of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

Telephone inquiries specific to this matter should be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231.

A handwritten signature in black ink, appearing to read "Nancy Johnson", is written over the typed name and title.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions